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CHARLES ELMORE [illegible]
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 217

WILLIAM STEVENS,

Appellant,

against

THE VESSEL WHITE CITY, HER ENGINES, ETC.,

Appellee.

AFFIDAVIT IN OPPOSITION TO MOTION FOR AN ORDER DIMINISHING THE RECORD

CHAUNCEY I. CLARK,
FLORENCE J. SULLIVAN,
Counsel for Appellee.

[illegible] Printing Co., Inc., 154 Nassau St., New York, N. Y.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 217

WILLIAM STEVENS,
Appellant;
AGAINST
The vessel WHITE CITY, her engines, etc.,
Appellee.

STATE OF NEW YORK,
County of New York. } ss.

FLORENCE J. SULLIVAN, being duly sworn, deposes and says:

I am counsel for the appellee in the above-entitled cause and I am familiar with all the facts and proceedings heretofore had herein.

Appellant's motion for an order diminishing the record by excluding the testimony taken and exhibits received before the Special Commissioner should be denied for the following reasons:

1. The testimony and exhibits sought to be excluded are a part of the record before the Circuit Court of Appeals and were considered by that Court in rendering its opinion (R. 414).

2. The evidence now sought to be excluded from the record has a bearing upon the decision in this cause, especially under

the contention made by appellant under Point III, (appellant's brief, p. 27). The point reads:

"Even assuming the correctness of the decision of the Circuit Court of Appeals on the foregoing questions of law, the reversal was erroneous because there was ample proof of negligence on the part of the owners of the *White City* as well as facts from which the court could reasonably infer that the damage was caused by a negligent act."

In the affidavit of Mr. James E. Freehill, counsel for appellant, in support of the motion, it is stated that the matter sought to be excluded is "wholly extraneous matter" and "will tend to becloud the real questions involved," (Freehill affidavit, p. 3). The fact is that the "matter" is not extraneous and will not becloud the real questions involved, but, on the contrary, will assist the Court in arriving at a decision on the points presented. Under appellant's Point III it is argued that there was "ample proof of negligence on the part of the owners of the *White City,* as well as facts from which the Court could reasonably infer that the damage was caused by a negligent act". Deponent does not deem it necessary to quote at length from the testimony sought to be excluded—a few excerpts will be sufficient to satisfy this Court that the testimony should not be excluded, *e. g.,* at R. 149, upon cross-examination of Jolly, appellant's surveyor, his testimony sought to be excluded has an important bearing upon whether the damage was due to "negligence on part of the owners of the *White City.*"

"Q. Have you any idea what could have caused that (damage)?

* * *

A. I would say it was caused by either a drift log or bumping up against the dock or something—looked to me like it was done by a log or piling of some sort."

See also the testimony of the same witness upon the nature of the damage, which in turn may have an important bearing upon the question of negligence of the *White City*, as follows:

"Q. Then it must have sunk in a little bit, this depression; otherwise it wouldn't be a depression? A. Sure, it was in" (R. 147).

Again at page 150:

"Q. Was the depression below or above the water line? A. Right in the water line, somewheres around there. I can't just give the exact location."

See also the testimony of Edward Robicheau:

"Well, give us your best recollection. A. Hole on the starboard side about the water line and some planks broke, that's all I remember" (R. 234).

It is, therefore, respectfully requested that the foregoing motion be denied.

FLORENCE J. SULLIVAN

Sworn to before me this 2nd day of December, 1931.

FREDERICK W. MUELLER
Notary Public Queens Co. No. 2210, Reg. No. 1063
Cert. filed in N. Y. Co. No. 802, Reg. No. 2-M-555
Commission expires March 30, 1932

[SEAL]